SBCivil Writ Petition No.5324/1993

Bhanwar Singh
Vs.
State of Rajasthan & Ors.

Date of Order :: 26th July, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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The short question involved in this petition for writ is that as to whether the government after taking a decision to hold a joint inquiry under Rule 18 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”) is required to issue a fresh charge sheet and call upon the delinquent employee to file written statement in respect of his defence and on basis of a charge sheet already issued under Rule 16 of the said Rules a joint inquiry under Rule 18 can be held?

In brief, facts of the case are that a memorandum dated 5.3.1987 under Rule 16 of the Rules of 1958 alongwith imputation of charges and statement of allegation was served upon the petitioner. The disciplinary authority under an order dated 10.7.1987 decided to proceed against the petitioner under Rule 18 of the Rules of 1958 with one Shri Mohd. Ayub

Gauri. As a consequence to the disciplinary proceedings by an order dated 23.10.1992 penalty of stoppage of ten annual grade increments with cumulative effect was imposed upon the petitioner and that was affirmed by the appellate authority by an order dated 23.7.1993.

While giving challenge to the orders aforesaid it is contended by counsel for the petitioner that after decision taken to hold joint inquiry under Rule 18 of the Rules of 1958 the respondents should have issued a fresh charge sheet and called upon the petitioner to file written statement in respect of his defence. It is further stated that on the basis of charge sheet already issued under Rule 16 joint inquiry could not be held and punishment could not be awarded.

As a matter of fact the controversy involved in this petition for writ is no more resintegra in view of the Division Bench Judgment of this Court in the case Kanhaiyalal Sharma v. State of Rajasthan, (DBCivil Special Appeal No.54/1989), decided on 25.4.2006, wherein the Division Bench of this Court while adjudicating the questions referred above held as under:-

> “Where, thus, joint enquiry is ordered by the Governor or the authority otherwise

> competent to impose the penalty of dismissal of service, specifying among other things the Disciplinary Authority for the purpose of such common proceeding but no charge-sheet is issued by such Disciplinary Authority in terms of rule 16, and the delinquent is denied opportunity to file written statement of his defence, possibility of his suffering prejudice is writ large. As indicated above, rule 18 has to be read subject to rule 16 and therefore, it is imperative that delinquent is provided with an opportunity to have his written statement of his defence considered by the Disciplinary Authority specified under rule 18. Where no charge-sheet is issued by such Disciplinary Authority and the delinquent is denied the opportunity to file written statement/defence, it not only results in prejudice to the delinquent but also causes infirmity in the departmental proceedings."

In the instant matter also first a charge sheet under Rule 16 of the Rules of 1958 was issued and thereafter the disciplinary authority decided to proceed with joint inquiry under Rule 18 of the Rules of 1958 without issuing a fresh charge sheet and by giving an opportunity to the petitioner to submit written statement.

In view of it the instant petition for writ deserves acceptance. In the result, the writ petition is allowed and the orders impugned dated 10.7.1987 and 23.10.1992 are hereby quashed.

In ordinary course this Court would have remitted the matter to the disciplinary authority for proceeding denovo, however, looking to the fact that the petitioner has retired from services long back and the charges are also not very grievous in nature, it would not be proper to remit the matter for denovo proceedings. In totality of facts and circumstances of this case I consider it appropriate to impose a penalty of stoppage of three annual grade increments with cumulative effect upon the petitioner w.e.f. 23.10.1992, the date on which the disciplinary authority imposed penalty upon the petitioner. The counsel for the petitioner is also in agreement for imposition of penalty as above instead of remitting the matter for denovo proceedings. The respondents shall revise the pension and other post retiral benefits of the petitioner accordingly within a period of six months from today.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.